

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT HUNTINGTON**

**DM MOTOR, INC.,**

**Plaintiff,**

**v.**

**C.A. No. 3:24-cv-00192**

**BLACK BEAR PAC, INC.,  
MORRISEY 2024, INC.,  
GRAY MEDIA GROUP, INC., d/b/a WSAZ,  
WVVA, WIYE, WOVA, WTAP, WDTV, and WVFX,  
WCHS LICENSEE, LLC, d/b/a WCHS and DCHS,  
NEXSTAR MEDIA INC., d/b/a WOWK, WVNS,  
EVNS, WTRF, GTRF, WBOY, EBOY,  
THOMAS BROADCAST CO., d/b/a WOAY-TV,  
DIRECTV, LLC, as a joint venturer in D2 MEDIA SALES,  
AD SYSTEMS, INC. d/b/a MARKET SPECIFIC ADS,  
A4MEDIA, LLC, and EFFECTV,  
a division of COMCAST CORPORATION,**

**Defendants.**

**VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES**

Comes now, the Plaintiff DM Motor, Inc. by counsel, and for its Complaint for Injunctive Relief and Damages, states as follows:

**JURISDICTION AND VENUE**

1. This is a suit for copyright infringement under the United States Copyright Act of 1976, as amended, 17 U.S.C. § 101, *et seq.* (the “Copyright Act”). This Court has jurisdiction pursuant to 28 U.S.C. § 1338(a).

2. Venue is proper in this judicial district pursuant to 28 U.S.C. Section 1400(a).

**PARTIES**

3. DM Motor, Inc. (hereinafter, “Dutch Miller Kia”) is a West Virginia Corporation with principal business address of 6400 U.S. Route 60 East, Barboursville, West Virginia 25504. It is in the business of selling new and used automobiles.

4. Black Bear PAC, Inc. (hereinafter “Black Bear”) is a West Virginia corporation with a principal office address of 138 Conant Street, Suite 401, Beverly Massachusetts 01915. In the online records of the West Virginia Secretary of State, it lists its only officer as Charles Gantt. It regularly conducts business within the jurisdiction of this Court.

5. Morrissey 2024, Inc. (hereinafter “Morrissey”) is a West Virginia corporation with a principal office address of 126 Rebels Roost Court, Harper’s Ferry, West Virginia 25425. It regularly conducts business within the jurisdiction of this Court.

6. Gray Media Group, Inc. (hereinafter “Gray”) is a Delaware corporation with a principal office address of 4370 Peachtree Road, NE, Suite 400, Atlanta, Georgia 30319. It does business in West Virginia through the television stations WSAZ, WVVA, WIYE, WOVA, WTAP, WDTV, and WVFX. It regularly conducts business within the jurisdiction of this Court.

7. WCHS Licensee, LLC (hereinafter “WCHS”) is a limited liability company which does not appear in the online records of the West Virginia Secretary of State’s office. Records of the Federal Communications Commission indicate that it is the licensed operator of television station WCHS and DCHS. It does business in West Virginia as WCHS and DCHS. Its principal office address is 1301 Piedmont Rd. Charleston, WV 25301. It regularly conducts business within the jurisdiction of this Court.

8. Nexstar Media Inc., (hereinafter “Nexstar”) is a Delaware corporation with a principal office address of 545 E. John Carpenter Freeway, Suite 700, Irving, TX, 75062. It does

business in West Virginia as television stations WOWK, WVNS, EVNS, WTRF, GTRF, WBOY, and EBOY. It regularly conducts business within the jurisdiction of this Court.

9. Thomas Broadcast Co. (hereinafter “Thomas”) is a West Virginia corporation with a principal office address of 7113 Legends Highway, Oak Hill, WV 25901. It does business in West Virginia as WOAY-TV.

10. DIRECTV, LLC, (hereinafter “Directv”) is a California limited liability company with a principal office address of 2260 E. Imperial Highway El Segundo, CA, 90245. It is a joint venturer in D2 Media Sales. It engages in business in the State of West Virginia through the sales and placement of advertisements for broadcast into the state of West Virginia. It regularly conducts business within the jurisdiction of this Court.

11. Ad Systems, Inc. (hereinafter “Ad Systems”) is a foreign corporation with a principal office address of PO Box 257, Olympia, WA, 98507-0257. It does business as Market Specific Ads. It engages in business in the State of West Virginia through the sales and placement of advertisements for broadcast into the state of West Virginia. It regularly conducts business within the jurisdiction of this Court.

12. A4Media, LLC (hereinafter “A4media”) is a foreign limited liability company with a principal office address of 1 Court Square, Long Island City, NY 11101. It engages in business in the State of West Virginia through the sales and placement of advertisements for broadcast into the state of West Virginia. It regularly conducts business within the jurisdiction of this Court.

13. Effectv, a division of Comcast Corporation, (hereinafter “Effectv”) is a Delaware corporation with a principal place of business in Philadelphia, PA. It does business as Effectv. It engages in business in the State of West Virginia through the sales and placement of advertisements

for broadcast into the state of West Virginia. It regularly conducts business within the jurisdiction of this Court.

### **FACTUAL BACKGROUND**

14. Plaintiff restates and realleges paragraphs 1 through 13 as if fully set forth herein.

15. Dutch Miller Kia is an automobile dealership which sells new and used vehicles from a location in Barboursville, Cabell County, West Virginia.

16. Dutch Miller Kia engages in advertising to raise its profile and further sales.

17. For the past decade, Dutch Miller Kia has created original video content (“DM Videos”) to promote the sales of its dealership, which have been broadcast in the West Virginia television markets and on the internet.

18. The DM videos constitute original works of authorship that are fixed in a tangible medium of expression that can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The audiovisual DM videos fit within the articulated subject matters of copyright set within 17 U.S.C. §102.

19. As such, at all times relevant hereto, Dutch Miller Kia has been and still is the holder of the exclusive rights under the Copyright Act of 1976 (17 U.S.C. §§ 101 et. seq., and all amendments thereto) (the “Copyright Act”) to reproduce, distribute, display, or license the reproduction, distribution, and/or display of its audiovisual multimedia work, and in particular, its commercial advertising, including the DM Videos.

20. The videos ran for a limited duration on West Virginia-based television stations and would be uploaded to Dutch Miller Kia’s YouTube page.



21. Three of the DM videos were entitled “Dutch Miller Kia June Revised”, which was published in 2014, “Dutch Miller Trump 60 HD bville”, which was published in 2016, and “Dutcher Things”, which was published in 2020 (collectively, “subject DM Videos”).

22. The subject DM Videos were on the Dutch Miller Kia YouTube page.

23. On or about April 6, 2024, representatives of Dutch Miller Kia became aware that several advertisements running in the local television market contained portions of the subject DM Videos.

24. The advertisement states, “Black Bear PAC is responsible for the content of this advertisement”.

25. Black Bear did not contact anyone with Dutch Miller Kia before using the subject DM Video content in the advertisements.

26. Black Bear did not seek permission from Dutch Miller Kia before using the subject DM Video content in the advertisements.

27. Dutch Miller Kia did not provide verbal or written consent for Black Bear’s use of the subject DM Video content in the advertisements.

28. On April 8, 2024, Dutch Miller Kia caused a letter to be sent to Black Bear via email to its Treasurer Charles Gantt and to its addresses listed with the West Virginia Secretary of State’s office, requesting that it cease and desist from using the subject DM Videos further in its advertisements.

29. On April 8, 2024, Dutch Miller Kia caused a letter to be sent to Gray, WCHS, Nexstar, Thomas, Directv, Ad Systems, A4Media, and Effectv requesting that they cease and desist from broadcasting the Black Bear ads which contained portions of the subject DM Videos.

30. On or about April 9, 2024, representatives of Dutch Miller Kia became aware that additional advertisements were running in the local television market which contained portions of the subject DM Videos.

31. The advertisement stated “Morrisey 2024 is responsible for the content of this advertisement”.

32. Morrisey did not seek permission from Dutch Miller Kia before using the subject DM Video content in the advertisements.

33. Dutch Miller Kia did not consent to Morrisey’s use of the subject DM Video content in the advertisements.

34. On April 9, 2024, Dutch Miller Kia caused a letter to be sent to Morrisey through email to Bradley Crate, the Treasurer for Morrisey, and to its addresses listed with the West Virginia Secretary of State’s office, requesting that it cease and desist from using the subject DM Videos further.

35. On April 9, 2024, Dutch Miller Kia forwarded a copy of the April 9, 2024 letter which was sent to Morrisey to Gray, WCHS, Nexstar, Thomas, Directv, Ad Systems, A4Media, and Effectv requesting that they cease and desist from broadcasting the Morrisey ads which contained portions of the subject DM Videos.

36. On April 9, 2024 Dutch Miller Kia was provided with a copy of a letter authored by James E. Tyrell III, an attorney with Dickson Wright, PLLC, a Washington, D.C. law firm, which was generically addressed “Attention Station Manager”.

37. The Tyrell letter had been provided to Caroline Wells with a company known as Locality, which has a business address of 5 Times Square, New York, New York.

38. The Tyrell letter encouraged the reader, the unidentified “Station Manager”, to “continue to air the ad”.

39. Neither James E. Tyrell III nor Black Bear has ever provided a copy of this letter directly to Dutch Miller Kia.

40. Black Bear never directly responded to Dutch Miller Kia’s Cease and Desist letter.

41. On April 10, 2024, Morrissey responded to Dutch Miller Kia’s Cease and Desist letter with another letter from Dickinson Wright, PLLC. This letter was authored by Charles R. Spies and Benjamin L. Mehr.

42. Morrissey refused to cease and desist the unauthorized use of Dutch Miller Kia’s intellectual property.

43. On April 11, 2024 Mike Jones, on behalf of Gray, responded by email and refused to cease and desist the unauthorized use of Dutch Miller Kia’s intellectual property.

44. On April 10, 2024 Shane C. Schwirian, on behalf of WCHS, responded by email and refused to cease and desist the unauthorized use of Dutch Miller Kia’s intellectual property.

45. On April 10, 2024 Shawn Banks, on behalf of Nexstar, responded verbally and refused to cease and desist the unauthorized use of Dutch Miller Kia’s intellectual property.

46. To date, Thomas, Directv, Ad Systems, A4Media, and Effectv have failed to acknowledge Dutch Miller Kia’s request to cease and desist the unauthorized use of Dutch Miller Kia’s intellectual property.

47. Dutch Miller Kia’s attempts to resolve its dispute with the Defendants without resorting to the Court for relief have been rendered futile by the refusal or failure of the Defendants to cooperate.

**CLAIMS OF COPYRIGHT INFRINGEMENT**

48. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1 through 47 as if fully restated herein verbatim.

49. Plaintiff alleges claims of willful copyright infringement, based upon Defendants' unauthorized use of Dutch Miller Kia's intellectual property and their refusal to cease and desist use of Dutch Miller Kia's intellectual property after notice.

50. Dutch Miller Kia was the creator of all of the subject DM Videos and is the owner of the content.

51. Each of the Defendants have publicly used Dutch Miller Kia's intellectual property without a license or permission to do so. Thus, Defendants have violated the exclusive rights maintained by Dutch Miller Kia in its copyrighted work and committed copyright infringement.

52. Each of the Defendants is liable for statutory damages for their improper use of Dutch Miller Kia's intellectual property.

53. The specific acts of copyright infringement alleged in the Complaint, as well as Defendants' entire course of conduct, have caused and are causing Plaintiffs great and incalculable harm and damage. By continuing to broadcast Dutch Miller Kia's intellectual property, Defendants threaten to continue committing copyright infringement. Unless this Court restrains Defendants from committing further acts of copyright infringement, Plaintiffs will suffer irreparable injury for which they have no adequate remedy at law.

WHEREFORE, Plaintiffs pray that:

(I) Defendants, their agents, servants, employees, and all persons acting under their permission and authority, be enjoined and restrained from infringing, in any manner, the intellectual property of Dutch Miller Kia, pursuant to 17 U.S.C. Section 502;



(II) Defendants be ordered to pay statutory damages, pursuant to 17 U.S.C. Section 504(c);

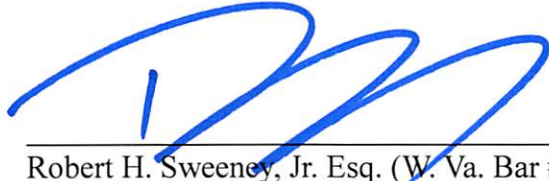
(III) Defendants be ordered to pay costs, including a reasonable attorney's fee, pursuant to 17 U.S.C. Section 505; and

(IV) Plaintiffs have such other and further relief as is just and equitable.

**PLAINTIFF DEMANDS A TRIAL BY JURY.**

**DM MOTOR, INC.**

**By counsel**



Robert H. Sweeney, Jr. Esq. (W. Va. Bar # 5831)

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**VERIFICATION**

**STATE OF WEST VIRGINIA  
COUNTY OF CABELL, TO-WIT:**

I, Samuel B. Miller, Vice President of DM Motor, Inc. being first duly sworn upon my oath, say that I have read the aforesaid "Verified Complaint for Injunctive Relief and Damages" against the listed Defendants and affirm that the facts and allegations contained therein are true and correct to the best of my knowledge, information, and belief.

By:   
Samuel B. Miller

Taken, subscribed and sworn to before me on this 12<sup>th</sup> day of April, 2024.

My commission expires: June 28, 2027

  
Notary Public



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